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FILED
MAY 29 2008
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 07-1348

In The

Supreme Court of the United States

James H. Boldt,

Petitioner

v.

Lia Boldt,

Respondent

On Petition for Writ of Certiorari
To The Supreme Court of Oregon

SUPPLEMENTAL BRIEF (RULE 15.8) TO PETITION FOR WRIT OF CERTIORARI

James H. Boldt,
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Counsel for Petitioner

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Petitioner had (on April 11, 2008) moved the Oregon Supreme Court for an order staying issuance of appellate judgment (Appdx. A, at 1-a); this motion was supplemented on April 28, 2008 (Appdx. B at 4-a).

The motion was based on Oregon Rules of Appellate Procedure (ORAP) 14.10 (Appdx. C at 6-a), which provides, *inter alia*, that

> "With respect to a motion requesting stay of issuance of the appellate judgment, stay of enforcement of the appellate judgment, or a recall of the appellate judgment pending the filing of and action on an appeal or petition for a writ of certiorari to the Supreme Court of the United States:
>
> . . .
>
> The motion shall be addressed to and acted upon by the Oregon Supreme Court when the decision of that court decides a case . . ."

The motion for stay urged, *inter alia*, that

> "It is requested that the stay be until further order of this Court, to be issued, upon motion of a party, after final action by the United States Supreme Court on Respondent on Review's petition for writ of certiorari (and on the merits if certiorari is granted)." (Mot. to Stay Appellate Judgment at 2, Appdx. A at 2-a).

The Oregon Supreme Court granted that motion (and also ruled on other motions not pertinent here) on May 7, 2008 (received by Petitioner on May 12, 2008). Appdx. D, at 7-a.

An appellate judgment is governed by Oregon Rules of Appellate Procedure (ORAP 14.05 Appdx. E, at 9-a).

ORAP 14.05 (1) provides, *inter alia*, that:

"(1) As used in this rule,
(a) "Appellate judgment" means a decision of the Court of Appeals or Supreme Court together with a final order and the seal of the court.
(b) "Decision" means a designation of prevailing party and allowance of costs together with,
(i) In an appeal from circuit . . . court, . . . an order disposing of the appeal or judicial review . . . or with respect to a per curiam opinion or an opinion indicating the author, the title page of the opinion containing the court's disposition of the appeal or judicial review. . . ."

ORAP 14.05(3) provides that:

"The Administrator shall prepare the appellate judgment, enter the appellate judgment in the register, send a copy of the appellate judgment with the court's seal affixed thereto to the court or administrative agency from which the appeal or judicial review was taken, and send a copy of the appellate judgment to each of the parties. . . ."

ORAP 14.05(2)(a) provides that

" The decision of the Supreme Court or Court of Appeals is effective:

(a) With respect to appeals from circuit court . . . on the date that the Administrator sends a copy of the appellate judgment to the court below."

Thus a remand of the case to the trial court (Pet. for Cert. at 9; Pet. for Cert. Appdx. E at 15-a) has not occurred; no appellate judgment (which would include a remand unless this Court reverses) will issue until after this Court takes final action on the case.

Respectfully submitted.

James H. Boldt [admitted to Court as J. Harlan Boldt], Attorney for Petitioner; Counsel of Record
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IN THE SUPREME COURT OF THE
STATE OF OREGON

In the Matter of the Marriage of	)
JAMES H. BOLDT,	)
Respondent on Review	)
and	)
LIA BOLDT	)
Petitioner on Review	)

Supreme Court No. S054714
Court of Appeals #A126175
Jackson County Circuit
Court #98-2318-D(3)

Respondent on Review's Motion--Stay Issuance of Appellate Judgment
Respondent on Review's Motion--Recall Appellate Judgment
Respondent on Review's Motion--Stay Enforcement of Appellate Judgment
Respondent on Review's Motion--Stay Trial Court Proceedings

Respondent on Review (Father) moves the Court for an order staying issuance of the appellate judgment.

If, when the Court considers this motion, an appellate judgment has already been issued, Respondent on Review moves the Court for an order recalling the appellate judgment---or, in the alternative,
an order staying enforcement of the appellate judgment.

This relief is authorized by ORAP 14.10.

Respondent on Review also notes that (a) the Court's opinion (344 Or 1, 176 P3d 388) remands the case to the trial court for further proceedings and (b) the Court's Denial of Petitions for Reconsideration (unreported), dated March 5, 2008, provided for further possible decision by the Trial Court on a motion for stay, specifically "Subject to further order of the trial court, the trial court's stay enjoining the parties from having M circumcised is extended until 14 days from the date of the appellate judgment." Respondent on Review thus also moves the Court to stay further Trial Court proceedings.

These motions are based on the fact that Respondent on Review will be filing a timely Petition for Writ of Certiorari in the United States Supreme Court. 28 USC 1257(a); Rule 13 of the U.S. Supreme Court.

It is requested that the stay be until further order of this Court, to be issued, upon motion of a party, after final action by the United States Supreme Court on Respondent on Review's petition for writ of certiorari (and on the merits if certiorari is granted).

Respondent on Review also requests that that the Court exercise its authority, as may be appropriate considering the timing of any appellate judgment that may issue, or be soon issued, contained in ORAP 7.05(3), that "The court may shorten the time for filing a response and may grant temporary relief pending the filing of a response, as circumstances may require."

Dated this 11h day of April, 2008.

/s/

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IN THE SUPREME COURT OF THE
STATE OF OREGON

In the Matter of the Marriage of	)
JAMES H. BOLDT,	)
Respondent on Review	)
and	)
LIA BOLDT	)
Petitioner on Review	)
	)

Supreme Court No. S054714
Court of Appeals #A126175
Jackson County Circuit Court #98-2318-D(3)

Respondent on Review's Motion---Other Supplement to
Respondent on Review's Motion--Stay Issuance of Appellate Judgment,
Respondent on Review's Motion--Recall Appellate Judgment,
Respondent on Review's Motion--Stay Enforcement of Appellate Judgment, and
Respondent on Review's Motion--Stay Trial Court Proceedings
filed on April 11, 2008

Respondent on Review supplements his motions noted above (filed April 11, 2008) by bringing to the Court's attention that the Petition for Certiorari to the U.S. Supreme Court then contemplated has been filed (filing date: April 22, 2008; docketed date: April 25, 2008; case No. 07-1348). A notation from the U.S. Supreme Court is attached hereto and incorporated

herein by this reference. [Docket entry of filing of case in the Supreme Court of the United States omitted in this reproduction]

Dated this 28h day of April, 2008.

/s/
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ORAP Rule 14.10
STAY PENDING ACTION BY THE SUPREME COURT OF THE UNITED STATES

With respect to a motion requesting stay of issuance of the appellate judgment, stay of enforcement of the appellate judgment, or a recall of the appellate judgment pending the filing of and action on an appeal or petition for a writ of certiorari to the Supreme Court of the United States:

(1) The motion shall be addressed to and acted upon by the Court of Appeals when the decision of the Court of Appeals decides a case, including when the Oregon Supreme Court has denied review except as provided in subsection (2) of this rule.

(2) The motion shall be addressed to and acted upon by the Oregon Supreme Court when the decision of that court decides a case and when the Supreme Court has denied review but granted a stay pending a decision on a petition for review.

See ORS 19.270(6)(b) and (c).

IN THE SUPREME COURT OF THE STATE OF OREGON

In the Matter of the Marriage of
JAMES H. BOLDT,
Petitioner-Respondent,
Respondent on Review,
and
LIA BOLDT,
Respondent Appellant,
Petitioner on review.
Court of Appeals
A126175
S054714

ORDER DENYING ATTORNEY FEES AND ALLOWING COSTS; DENYING REQUEST FOR FINDINGS UNDER ORAP 13.10(7); ALLOWING MOTION FOR STAY OF APPELLATE JUDGMENT; AND DENYING MOTIONS TO RECALL THE APPELLATE JUDGMENT, STAY ENFORCEMENT OF APPELLATE JUDGMENT AND STAY TRIAL COURT PROCEEDINGS AS MOOT

Upon consideration by the court.

Petitioner on review's petition for attorney fees is denied.

Petitioner on review's petition for costs is allowed in the amount of $406.90.

Respondent on review's request for findings under ORAP 13.10(7) is denied.
Respondent on review's motion for stay of appellate judgment is allowed. The motion to recall the appellate judgment, motion to stay enforcement of

appellate judgment, and motion to stay trial court proceedings are denied as moot.

May 7, 2008 /s/ W. Michael Gillette
DATE PRESIDING JUSTICE

Linder, J., not participating

c: Clayton C Patrick
Robert A Graham, Jr
Steve C Morasch
Michael H Simon
James H Boldt

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ORDER DENYING ATTORNEY FEES AND ALLOWING COSTS; DENYING REQUEST FOR FINDINGS UNDER ORAP 13.10(7); ALLOWING MOTION FOR STAY OF APPELLATE JUDGMENT; AND DENYING MOTIONS TO RECALL THE APPELLATE JUDGMENT; STAY ENFORCEMENT OF APPELLATE JUDGMENT AND STAY TRIAL COURT PROCEEDINGS AS MOOT

REPLIES SHOULD BE DIRECTED TO;
State Court Administrator, Records Section,
Supreme Court Building, 1163 State Street,
Salem, OR 97301-2563
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Rule 14.05 APPELLATE JUDGMENT

(1) As used in this rule,

(a) "Appellate judgment" means a decision of the Court of Appeals or Supreme Court together with a final order and the seal of the court.

(b) "Decision" means a designation of prevailing party and allowance of costs together with,

(i) In an appeal from circuit or tax court, or on judicial review of an agency proceeding, an order disposing of the appeal or judicial review or affirming without opinion; or with respect to a per curiam opinion or an opinion indicating the author, the title page of the opinion containing the court's disposition of the appeal or judicial review.

(ii) In a case of original jurisdiction in the appellate court, in addition to the documents specified in subparagraph (i) of this paragraph, an order denying, dismissing, or allowing without opinion the petition or other document invoking the court's jurisdiction. An order allowing a petition for an alternative writ of mandamus or writ of habeas corpus is not a decision within the meaning of this rule.

(c) "Designation of prevailing party and allowance of costs" means that part of a decision indicating, when relevant, which party prevailed before the appellate court, whether costs are allowed, and, if so, which party or parties are responsible for costs.

(d) "Final order" means that part of the appellate judgment ordering payment of costs or attorney fees in a sum certain by specified parties or directing entry of judgment in favor of the Judicial Department for unpaid appellate court filing fees, or

both.

(2) The decision of the Supreme Court or Court of Appeals is effective:

(a) With respect to appeals from circuit court or Tax Court, on the date that the Administrator sends a copy of the appellate judgment to the court below.

(b) With respect to judicial review of administrative agency proceedings, on the date that the Administrator sends a copy of the appellate judgment to the administrative agency.

(c) With respect to original jurisdiction proceedings, within the time or on the date specified in the court's decision or, if no time period or date is specified, on the date of entry of the appellate judgment. When the effective date is specified in the court's decision, the decision is effective on that date notwithstanding the date the appellate judgment issues.

(3) The Administrator shall prepare the appellate judgment, enter the appellate judgment in the register, send a copy of the appellate judgment with the court's seal affixed thereto to the court or administrative agency from which the appeal or judicial review was taken, and send a copy of the appellate judgment to each of the parties.

(a) With respect to a decision of the Court of Appeals, the Administrator will not issue the appellate judgment for a period of 35 days after the decision to allow time for a petition or review pursuant to ORS 2.520 and ORAP 9.05. If a petition for review is filed, the appellate judgment will not issue until the petition is resolved.

(b) With respect to an order of the Supreme Court denying review or a decision of the Supreme Court, the Administrator will not issue the appellate judgment for a period of 21 days after the order or decision to allow time for a petition for reconsideration under ORAP 9.25 or a petition for attorney fees or submission of a statement of costs and disbursements under ORAP 13.05 and ORAP 13.10.

(c) If one or more statements of costs and disbursements, petitions for attorney fees, or motions or petitions for reconsideration are filed, the Administrator will not issue the appellate judgment until all statements of costs and disbursements, petitions for attorney fees, or petitions for reconsideration are determined by order of the court.

(d) Notwithstanding paragraphs (a), (b), and (c) of this subsection, a party may request immediate issuance of the appellate judgment based on a showing that no party intends to file a petition for review, petition for attorney fees, or any other thing requiring a judicial ruling.

(4) (a) The money judgment part of an appellate judgment for costs, attorney fees, or both, in favor of a party other than the Judicial Department that has been entered in the judgment docket of a circuit court may be satisfied in the circuit court in the manner prescribed in ORS 18.225 to 18.238, or other applicable law.

(b) The money judgment part of an appellate judgment for an unpaid filing fee or other costs in favor of the Judicial Department shall be satisfied as follows. Upon presentation to the Administrator of sufficient evidence that the amount of the money

judgment has been paid:

(i) The Administrator shall note the fact of payment in the appellate court case register; and

(ii) If requested by the party and upon payment of the certification fee, the Administrator shall issue a certificate showing the fact of satisfaction of the money judgment. As requested by the party, the Administrator shall issue a certificate to the party, to the court or administrative agency to which a copy of the appellate judgment was sent, or to both.

See generally ORS 19.450 regarding appellate judgments in appeals from circuit court and Tax Court. A party considering petitioning the United States Supreme Court for a writ of certiorari with respect to an Oregon appellate court decision should review carefully 28 USC ;st 2101(c) and the United States Supreme Court Rules, currently ORAP 13, to determine the event that triggers the running of the time period within which to file the petition. *See also International Brotherhood v. Oregon Steel Mills, Inc.*, 180 Or App 265, 44 P3d 600 (2002) (majority, concurring, and dissenting opinions).